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September 23, 2016

Via ECF

**Honorable Valerie E. Caproni
United States District Judge
United States District Court for the Southern
District of New York
Thurgood Marshall United States Courthouse**

**Re: Bryan Fernandez v. HR Parking, LLC et. al.
Civil Action No. 16 CV 2762 (VEC)**

Dear Judge Caproni:

This office represents Defendants HR Parking, Inc. and Nelson Rodriguez in the above captioned matter. I write in response to the letter dated September 16, 2016 from Plaintiff's counsel submitting a proposed Order Conditionally Certifying Collective Action and the proposed Notice of Collective Action Lawsuit ttached to the proposed Order.

Plaintiff's counsel previously submitted the proposed Order and proposed Notice to me for review and comment. By e mail dated September 7, 2016 I submitted a redlined version with Defendants' proposed revisions to the Order and Notice. I did not receive any response from Plaintiff's counsel with respect to Defendants' proposed revisions.

Upon receipt of notification that Plaintiff's counsel submitted to the Court the proposed Order and proposed Notice prepared by Plaintiff's counsel, without advising the Court that Defendants did not consent to the proposed Order and proposed Notice, I e- mailed Plaintiff's counsel to ask if Plaintiff's counsel had overlooked the revisions proposed by Defendants. Plaintiff's counsel responded that they did not agree to the proposed revisions. A copy of the e-mail communications are attached as Exhibit A.

I attach as Exhibit B Defendants' redlined version of the proposed Order and Notice.

As indicated in the letter dated September 22, 2016 from Frank J. Keenan, Esq., counsel for the co-defendants, HR Parking entered into a contract with Open Road of Audi Manhattan, to provide parking valet services at the location known as Audi Manhattan, 800 11th Avenue, New York, New York. The named Plaintiff, Bryan Fernandez, who filed the Complaint individually and on behalf of other similarly situated was employed by HR Parking as a parking valet at the

Audi Manhattan location beginning in October of 2012, i.e., more than three years prior to the filing of the Complaint on April 13, 2016. Thus, the putative collective action members, i.e., those similarly situated to the named Plaintiff, are those persons employed by HR Parking as parking valets at the Audi Manhattan location.

The proposed Order and Notice submitted by Plaintiff's counsel is overbroad for these reasons:

1. The putative party plaintiffs are not "all valets of the defendants", but rather the valets who worked at the Audi Manhattan location;
2. Neither the Order or Notice precisely define those who are eligible to opt in as party plaintiffs, i.e., persons employed on or after April 13, 2013, three years prior to the date the Complaint was filed;
3. The contract between HR Parking and Open Road of Manhattan has been terminated and HR Parking no longer provides parking valets at the Audi of Manhattan location. Thus, Defendants HR Parking and Rodriguez do not have the power or ability to post notice of the collective action at the former workplace, as Plaintiff's proposed Order requires. Therefore, Defendants propose posting the Notice at their principal place of business for HR Parking, in the area where statutory notices to employees are posted;
4. The employee list to be provided by Defendants should be limited to persons who are similarly situated to the named Plaintiff, i.e, employed as parking valets at the Audi Manhattan location on or after April 13, 2013.

For these reasons, Defendants respectfully request that the court enter the proposed Order with attached Notice with Defendants' revisions. A "clean" copy of Defendants' proposed Order and attached Notice is attached hereto as Exhibit C.

Thank you for your consideration of this matter.

Respectfully submitted,

s/ Michael K. Chong

MICHAEL K. CHONG

cc: Frank J. Keenan, Esq
John M. Gurrieri, Esq
BY ECF